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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1292

OCEANIC CALIFORNIA INC.,
Appellant,

vs.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One, After Entry of Order by the Supreme Court of the State of California, Denying a Hearing

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees and Intervenors Natural Resources Defense Council and California Coastal Alliance, Inc., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court to dismiss this appeal or to affirm the judgment of the Court of Appeal of the State of California. The Jurisdictional Statement filed by appellant discloses

no substantial federal question herein which would require further argument.

THE QUESTION PRESENTED

Does a state's determination that it has jurisdiction over further proposed developments in a subdivision, under a newly enacted, comprehensive system of land use regulation, violate the Fourteenth Amendment of the United States Constitution, where no construction of the developments has begun and the developer has not obtained the other permits or approvals which are required for the construction of such developments?

STATEMENT OF THE CASE

In 1972, the people of the State of California, acting through the initiative process, passed the California Coastal Zone Conservation Act, Public Resources Code §§ 27000, *et seq.*, in order to provide for the preparation of a plan for the orderly, balanced development of the state's coastline. During this interim planning period, the Act further provided that any person wishing to develop property within the coastal zone must first obtain a permit therefor (Section 27400), unless the person had previously acquired a "vested right" to construct the development (Section 27404). The California Coastal Zone Conservation Commission was established to administer the Act, and the Commission immediately adopted regulations which provided for two distinct procedures for the disposition of applications for development permits and exemption claims.

See Cal. Administrative Code, Title 14, Div. 5.5, Chapters 5, 9 (1974).

Subsequently, appellant applied to the Commission for exemptions from the Coastal Act for various subdivision units known as The Sea Ranch, based on purported vested rights. Initially, the Commission granted exemptions for particular subdivision units, but it denied a later application filed by appellant for an exemption for The Sea Ranch in its entirety. Jurisdictional Statement at 2, 11 n. 9. The latter claim, which sought a blanket exemption for 5200 acres of land along ten miles of the Northern California coastline, is the subject of the instant appeal.

At no time has appellant ever sought a permit from the Commission to develop its property. Thus, its repeated assertion that the Commission has endeavored to "repudiate" or "stop development" at The Sea Ranch (*Id.*, at 5, 16), is not supported by any official action taken by the Commission. The Commission has never denied appellant the right to undertake further construction at The Sea Ranch. It has determined only that further development of substantial portions of The Sea Ranch is not exempt from the Act's permit requirement.[1]

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[1]Nor is appellant correct in asserting that the standards for reviewing permit applications under the Coastal Act of 1972 are "not yet articulated." *Id.* at 6. The Act contained various criteria for regulating interim coastal development. *See, e.g.*, Public Resources Code §§ 27001, 27302, 27401-27403. The 1972 Act expired on January 1, 1977, and its successor legislation, the California Coastal Act of 1976, Public Resources Code §§ 30000 *et seq.*, contained further "articulation" of the standards for reviewing permit applications. *See, e.g.*, Public Resources Code §§ 30200-30264.

While appellant had previously subdivided and improved some of its property on a unit-by-unit basis, vast acreage at The Sea Ranch remained largely undeveloped at the time the Coastal Act was passed and became effective in 1972. Indeed, although Oceanic contemplated a full build-out of 5200 dwellings at The Sea Ranch, only approximately 350 homes had been constructed. *Id.* at 10, 12.

These subdivision units were in varying stages of planning by the developer and had received varying levels of preliminary approvals by the local government for various kinds of work. Therefore, the Commission and the California courts, upon review, were required to sift through a welter of facts and documents which appellant presented in support of its claim.

As reflected in the opinion of the California Court of Appeal (attached as Appendix A to appellant's Jurisdictional Statement), this review disclosed, *inter alia,* that Oceanic had failed to secure any permits or other final approvals for the proposed developments at issue, prior to the effective date of the Coastal Act of 1972. In particular, Oceanic had failed to secure (1) permits required for proposed single family dwellings, including septic tank or sewer permits, permits for site grading, and building permits, (2) approvals required for proposed condominiums, including tentative maps, use permits, building permits, grading permits and precise development plan approvals, and (3) extensions of tentative subdivision maps, which were required for the subdivision of

other areas and which had previously lapsed. *Id.* at A-19, -21, -22.

Appellant also attempted to base its claim for vested rights in part on very general, preliminary governmental approvals, including the planned unit development ("PUD") zoning classification for The Sea Ranch, and the general and specific plans for the area. *Id.* at 11. Under state and local law, however, these ordinances and plans were expressly subject to amendment by the local government at any time, under broad public interest standards. *See* Cal. Government Code § 65356.1 (amendment of general plan); Government Code § 65507 (amendment of specific plan); Sonoma County Code § 26-227(2), (3) (amendment of PUD zoning classification).

The Court of Appeal not only evaluated the exemption claim in its entirety, but also carefully reviewed each of the particular circumstances surrounding each unit or category of developments for which an exemption was sought. It held that appellant had failed to establish a vested right to construct these developments, and the California Supreme Court denied a hearing in the matter.

APPELLANT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION WHICH WOULD REQUIRE FURTHER ARGUMENT

This Court has recently dismissed another appeal which was based on circumstances very similar to those relied upon by appellant herein. *Avco Community Developers v. South Coast Regional Commission,* 17

Cal.3d 785 (1976), *appeal dismissed,* 45 U.S.L.W. 3664 (April 4, 1977). Appellant's claim is extraordinary only in its magnitude. While the developer in *Avco* sought an exemption for one subdivision of 74 acres, appellant has sought a blanket exemption for numerous subdivision units within 5200 acres.

This case does not involve any purported "taking" of private property. Nor does it raise any question concerning the legitimacy of the application of specific regulations to any particular parcels of land. Appellant has not applied for a permit from the Commission for further development at The Sea Ranch, and no final determination has otherwise been made concerning future development there. The question decided by the Coastal Commission and the courts below was solely whether or not the land encompassed by The Sea Ranch within the coastal zone would be subject to the *jurisdiction* of the Coastal Commission. *See Oceanic* Opinion, Jurisdictional Statement at A-26; *Avco Community Developers v. South Coast Regional Commission,* 17 Cal.3d 785, 802 (1976); *Urban Renewal Agency v. California Coastal Zone Conservation Commission,* 15 Cal.3d 577, 588, 589 (1975).

This type of jurisdictional determination raises no substantial federal question. In contrast to the circumstances in the present case, in *Reinman v. Little Rock,* 237 U.S. 171 (1915), and *Hadacheck v. Sebastian,* 239 U.S. 394 (1915), cited by appellant, this Court's jurisdiction was invoked to determine whether substantial business facilities, of long standing operation, could be prohibited by the retroactive application of a new zoning ordinance. *Cf. Goldblatt v. Town of Hempstead,* 369 U.S. 590 (1962). In *Dobbins v. Los Angeles,* 195 U.S. 223 (1904), a gas works authorized by a permit had already been partially completed when the city amended its ordinance to prohibit the maintenance of such a facility. In *Reinman* and *Hadacheck,* the application of the ordinances was upheld, while in *Dobbins* it was held unconstitutional.

For present purposes, it is unnecessary to determine where these few cases draw the line in determining when a zoning ordinance may be retroactively applied, consistent with principles of due process. In the instant case, the developments for which vested rights are claimed have not yet been constructed and were not even finally approved by local government at the time of the Coastal Act's passage. In addition, as previously noted, the decision below does not bar these developments but merely subjects them to the Coastal Act's permit requirements.

Even apart from these considerations, the thrust of appellant's argument herein is based on the erroneous premise that the California courts require "the issuance of a building permit, a mere ministerial act, as a *sine qua non* for a vested right. . . ." Jurisdictional Statement at 18. Even if it were assumed that such a requirement would raise questions of due process, appellant's assertion is flatly contradicted by the opinion of the Court of Appeal in this case: "It may be assumed that literal adherence to the issuance of a

'building permit' is *not* the *sine qua non* of the establishment of a vested right . . . ." *Id.* at A-9 (emphasis added). *See also Avco Community Developers, Inc. v. South Coast Regional Commission,* 17 Cal.3d 785, 794 (1976). Indeed, the standard for determining vested rights advanced by appellant is precisely the one which was applied by the Court of Appeal in this case. *See* Jurisdictional Statement at 19, A-9.

It is clear, therefore, that the question which Oceanic has framed for this Court is not whether the California courts have applied a principle of vested rights which is repugnant to the due process clause of the United States Constitution, but, rather, whether the Commission and the courts below properly interpreted the significance and scope of the different permits and approvals obtained by appellant under the local ordinances of Sonoma County, California. To answer this question, this Court would be required to steep itself in California's state and local zoning and subdivision laws and determine what precise authority for further development was granted to appellant by zoning classifications, general and specific plans, tentative and final subdivision maps, special use permits, and a variety of more particularized measures adopted at the local level—as well as the significance of appellant's failure to obtain various permits.

While the opinion of the Court of Appeal fulfills a commitment to afford appellant this type of extensive and searching review, such matters scarcely raise a substantial federal question. As Mr. Justice Marshall stated in his dissenting opinion in *Village of*

Belle Terre v. Boraas, 416 U.S. 1, 13 (1974), this Court does not "sit as a zoning board of appeal."

Finally, appellant purports to find support for its expansive exemption claim in general principles of equitable estoppel. However, to the extent principles of equitable estoppel have figured at all in the formulation of vested rights doctrine, their limited applicability against government[2] is fully accounted for in the traditional requirements of the vested rights doctrine applied in this case by the courts below. In all events, we have been unable to find any case in which principles of equitable estoppel have been generally equated with principles of due process. *See, e.g.,* Annot., 1 A.L.R.2d 338 (1948); Annot., 27 A.L.R. Fed. 702 (1976). Where estoppel has been applied against the government, the express bases for the decision have been only that equitable considerations require it and the public interest would not be unduly damaged. *See, e.g., Moser v. U.S.,* 341 U.S. 41 (1951); *U.S. v. Lazy F.C. Ranch,* 481 F.2d 985 (9th Cir. 1973). No substantial federal question is raised in such instances.

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[2]*See, e.g., Utah Power & Light Co. v. U.S.,* 243 U.S. 389 (1917); *County of San Diego v. Calif. Water, etc., Co.,* 30 Cal. 2d 817 (1947).

CONCLUSION

Based on the foregoing, we respectfully move this Court to dismiss this appeal or, in the alternative, to affirm the judgment of the California Court of Appeal entered in this case for the reason that no substantial federal questions are presented in the Jurisdictional Statement which would require further argument.

Dated, April 15, 1977.

Respectfully submitted,

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